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**OFFICE OF PETITIONS**

In re Application of	:	
Brown, et al.	:	
Application No. 10/727,998	:	ON PETITION
Filed: December 3, 2003	:	
Attorney Docket No. D9359B	:	

This is a decision on the papers filed October 4, 2005, which have been treated as a petition under 37 CFR 1.182 and a request for reconsideration of a petition requesting that the above-identified application be accorded a filing date of December 3, 2003, including the specification. The petition was recently forwarded to this office for review.

The application was submitted on December 3, 2003. However, on May 12, 2005, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Incomplete Nonprovisional Application," (Notice) that stated the application had not been accorded a filing date, and that, among other items, the specification appears to have been omitted.

In response, on June 3, 2005, a copy of the specification and the original petition were submitted.

Petitioner stated in the original petition, "Attached as Exhibit C, is a copy of Applicant's Transmittal Form for the captioned U.S. Patent Application at issue. At page 2 of this transmittal form, Applicant checked box 5, to incorporate by reference, the entire specifications, drawings, claims, and oath of the prior co-pending patent applications listed at page 1 of the transmittal form."

Petitioner appears to request the use of the incorporation by reference statement in Box 5 of the Utility Patent Application Transmittal to incorporate-by-reference the specification of prior application no. 09/692,273, in order to accord the above-identified application a filing date of December 3, 2003.

On the filing of the original petition, MPEP 201.06(c) stated:

"A. Application NOT Entitled to a Filing Date

Material needed to accord an application a filing date may not be incorporated by reference. Therefore, if a continuation or divisional application as originally filed

incorporates by reference material omitted from the application papers, which is needed to accord the application a filing date, the application will **not** be entitled to a filing date. A petition under 37 CFR 1.182 and the required petition fee, including an amendment submitting the necessary omitted material, requesting that the necessary omitted material contained in the prior application and submitted in the amendment, be included in the continuation or divisional application based upon the incorporation by reference statement, is required in order to accord the application a filing date as of the date of deposit of the continuation or divisional application. An amendment submitting the omitted material and relying upon the incorporation by reference will not be entered in the continuation or divisional application unless a decision granting the petition states that the application is accorded a filing date and that the amendment will be entered."

Petitioner has submitted the required petition, petition fee, and an amendment submitting the necessary omitted material, requesting that the necessary omitted material contained in the prior application and submitted in the amendment, be included in the continuation or divisional application based upon the incorporation by reference statement.

The petition is granted.

Based on petitioners' representation that the specification supplied on June 3, 2005 is a part of the disclosure of prior application no. 09/692,273 and that the entire disclosure of prior application no. 09/692,273 was specifically incorporated by reference in the present application on December 3, 2003, it appears that the specification was present in the Office on December 3, 2003, albeit in the file of another application, i.e., application no. 09/692,273. Therefore, on petition, the application may be granted the requested filing date of December 3, 2003.

Of course, the primary examiner is expected to compare the specification supplied on June 3, 2005, to the disclosure of prior application no. 09/692,273 in order to verify that the specification is, in fact, part of the disclosure of the prior application.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of December 3, 2003, using the specification supplied on June 3, 2005.

Telephone inquiries should be directed to the undersigned at (571) 272-3228.



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for Patent Examination Policy